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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,621

Applicant(s)

HAUSMANN ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 8, 2004 has been entered.

Acknowledgement of Applicant's Amendments

2. The amendments made in claims 1, 4 and 5 in the Amendment filed January 8, 2004 (Amdt. C) have been received and considered by Examiner.

3. Note that the claim status identifier "(previously amended)" used to identify claims 3 and 8 in Amdt. C does not comply with the Revised Amendment Practice effective July 30, 2003 (37 CFR 1.121). The claim status identifier "(previously presented)" is the proper identifier for claims 3 and 8 in Amdt. C.

Election/Restrictions

4. Applicant's election with traverse of Group I, claims 1-8, in Paper No. 9 is acknowledged. The traversal is on the ground(s) that "examining the two groups together imposes no added burden on the Patent Office". This is not found persuasive because the inventions of Groups I and II are distinct for the reasons given in Paper 7 and have acquired a separate status in the art as shown by their different classification.

The requirement is still deemed proper and was made FINAL in Paper 12.

WITHDRAWN REJECTIONS

5. The 35 U.S.C. 112 rejection of claims 4 and 5 made of record in paragraph 13 of Paper 12 has been withdrawn due to Applicant's amendments in claims 4 and 5 in Amdt. C.

REPEATED REJECTIONS

6. The 35 U.S.C. 102 rejection of claims 1 and 4 as being anticipated by Hekal made of record in paragraph 15 of Paper 12 has been repeated for the reasons made of record in paragraph 15 of Paper 12 and for the following reasons that address the amendments made in claims 1 and 4 in Amdt. C: fresh fish falls within the scope of the teaching of Hekal that the odor absorbing material is used "in fish wrapping" and in "bags containing fish" (page 8, lines 14-22). Since Hekal teaches a multilayer structure comprising an elastic sheet and layers of the odor absorbing material situated on both sides of the elastic sheet (page 7, line 28-page 8, line 10) as stated in paragraph 15 of Paper 12, Hekal teaches at least three polymer film layers. Since Hekal teaches that the odor absorbing film is placed between two absorbent layers to form a multilayer structure (page 7, lines 18-24), Hekal teaches a multilayer structure that is structurally equivalent to the at least three polymer film layers that are laminated with each other as claimed. Hekal teaches an absorbent film layer (page 7, lines 21-23). The adsorbent polymer of Hekal (i.e. polyethylene acrylic acid, see paragraph 15 of Paper 12) is necessarily adsorbent in and of itself as claimed because the adsorbent polymer of Hekal in and of itself compositionally falls within the scope of the adsorbent polymer composition claimed in claim 1 of the instant application.

In regard to claim 4, Hekal teaches that the absorbent film layer contains zeolite (page 7, line 3). Since the absorbent film layer of Hekal is compositionally identical to the composition claimed in claim 4, the zeolite of Hekal necessarily hinders the adsorption amines as claimed.

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7. The 35 U.S.C. 103 rejection of claims 2, 4 and 6 over Hekal in view of Yoshikawa et al. made of record in paragraph 16 of Paper 12 has been repeated for the reasons made of record in paragraph 16 of Paper 12. The new basis for rejection of claim 4 discussed above in regard to the 35 U.S.C. 102 rejection of claims 1 and 4 as being anticipated by Hekal replaces the basis of rejection of claim 4 provided in paragraph 16 of Paper 12 (N.B. claim 4 is rejected under 35 U.S.C. 103 in paragraph 16 of Paper 12 for only the instance where claim 4 depends upon claim 2).

8. The 35 U.S.C. 103 rejection of claims 3 and 5 over Hekal in view of Kennedy et al. made of record in paragraph 17 of Paper 12 has been repeated for the reasons made of record in paragraph 17 of Paper 12. The new basis for rejection of claim 4 discussed above in regard to the 35 U.S.C. 102 rejection of claims 1 and 4 as being anticipated by Hekal replaces the basis of rejection of claim 5 provided in paragraph 17 of Paper 12: Hekal teaches that the absorbent film layer contains zeolite (page 7, line 3). Since the absorbent film layer of Hekal is compositionally identical to the composition claimed in claim 5, the zeolite of Hekal necessarily hinders the adsorption amines as claimed.

9. The 35 U.S.C. 103 rejection of claims 3, 5 and 7 over Hekal in view of Yoshikawa et al. and in further view of Kennedy et al. made of record in paragraph 18 of Paper 12 has been repeated for the reasons made of record in paragraph 18 of Paper 12. The new basis for rejection of claim 4 discussed above in regard to the 35 U.S.C. 102 rejection of claims 1 and 4 as being anticipated by Hekal replaces the basis of rejection of claim 5 provided in paragraph 18 of Paper 12 (N.B. claim 5 is rejected under 35 U.S.C. 103 in paragraph 18 of Paper 12 for only the instance where claim 5 depends upon claim 2).

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10. The 35 U.S.C. 103 rejection of claim 8 over Hekal in view of Andersson et al. made of record in paragraph 19 of Paper 12 has been repeated for the reasons made of record in paragraph 19 of Paper 12.

NEW OBJECTIONS

Claim Objections

11. Claims 4 and 5 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 requires that the at least one adsorbent film layer consists essentially of at least one adsorbent polymer"; therefore, the adsorbent film layer of claims 4 and 5 cannot "additionally contain[] active ingredients selected from zeolites or other active ingredients" as the language of claim 1 stands.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

12. Claims 1, 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the multiple polymer film layers" in the fourth line of the claim; there is insufficient antecedent basis for this limitation in the claim. The scope intended to be delineated by the recitation "other similar active ingredients" cannot be ascertained. Claim 1 recites the limitation "the multilayer polymer film " in the ninth line of the claim; there is insufficient antecedent basis for this limitation in the claim. The term "absorbent" is recited in the second line of claim 4, while the term "adsorbent" is recited in the first line of

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claim 5; is this as intended? Claim 1 requires that the at least one adsorbent film layer consists essentially of at least one adsorbent polymer”; therefore, the adsorbent film layer of claim 4 and the adsorbent film layer of claim 5 cannot “additionally contain[] active ingredients selected from zeolites or other active ingredients” as the language of claim 1 stands. The scope intended to be delineated by the recitation “other active ingredients” cannot be ascertained.

ANSWERS TO APPLICANT’S ARGUMENTS

13. Applicant’s arguments on pages 4-7 of Amdt. C regarding the 35 U.S.C. 102(b) rejection of claims 1 and 4 as anticipated by Hekal have been fully considered but are not deemed to be persuasive. Applicant argues that there “is no teaching of a multilayer film” because “the two absorbent layers would not likely be a polymer film but would be a fabric”, but as stated in paragraph 20 of Paper 12, an elastic sheet is taught as a material of the absorbent layer (page 7, line 34-page 8, line 1) and many fabrics are polymeric. A layer of fabric in a multilayer film is structurally equivalent to a polymer film layer as claimed. Hekal teaches a multilayer film for the reasons discussed in paragraph 15 of Paper 12 and in the update to the 35 U.S.C. 102 rejection of claim 1 provided above. Applicant points out that Hekal teaches use of the multilayer structure “in a feminine pad, diaper or panty liner, not packaging”, but Hekal also teaches use of the multilayer structure as a “fish wrapping” or as a liner of “bags containing fish”; therefore, Hekal does teach use of the multilayer structure in packaging. As stated in the update to the 35 U.S.C. 102 rejection of claim 1 provided above, the multilayer structure of Hekal comprises at least three polymer film layers that are laminated with each other as claimed. The elastic sheet (page 8, line 1) is necessarily a film. Applicant asserts that Hekal “doesn’t say where in the pad the elastic “sheet” would be used”, but the location of elastic sheet relative to the other components

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of the feminine pad, diaper or panty liner is disclosed (page 7, line 29-page 8, line 10).

Applicant's statement that "there is not even a preference to include the elastic sheet in the structure" is irrelevant, the elastic sheet is taught by Hekal. Applicant's arguments that "it may be possible that the zeolite-containing material could contact the elastic sheet [and the "backside layer"]" are inconclusive.

In response to Applicant's second reason for traversal of the 35 U.S.C. 102 rejection of claim 1 provided on page 6 of Amdt. C, the adsorbent polymer of Hekal (i.e. polyethylene acrylic acid, see paragraph 15 of Paper 12) is necessarily adsorbent in and of itself as claimed because the adsorbent polymer of Hekal in and of itself compositionally falls within the scope of the adsorbent polymer composition claimed in claim 1 of the instant application.

Applicant's argument that "While it may be a package, the suggestion is that it more likely is not a package containing fresh fish or other perishable food items, but is more likely a wrap for spoiled fish" is inconclusive, and furthermore, fresh fish falls within the scope of the teaching of Hekal that the odor absorbing material is used "in fish wrapping" and in "bags containing fish" (page 8, lines 14-22). The condition where "fish wrapping is a package containing fresh fish" falls within the scope of the teaching of Hekal that the odor absorbing material is used "in fish wrapping" and in "bags containing fish" (page 8, lines 14-22). Applicant argues in the paragraph bridging pages 6 and 7 of Amdt. C that the fresh fish limitation should be given weight, and Examiner agrees; fresh fish falls within the scope of the teaching of Hekal that the odor absorbing material is used "in fish wrapping" and in "bags containing fish" (page 8, lines 14-22).

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Applicant argues that there “is no basis for selecting” the copolymer claimed by Applicant from the Hekal reference, but Hekal teaches the copolymer claimed by Applicant.

In regard to claim 4, Hekal teaches that the absorbent film layer contains zeolite (page 7, line 3). Since the absorbent film layer of Hekal is compositionally identical to the composition claimed in claim 4, the zeolite of Hekal necessarily hinders the adsorption amines as claimed.

Applicant argues that Example 1 of Hekal “involves absorbing amines from a liquid, not a volatile compound from a headspace” but the limitation that amines are absorbed presumably from a volatile compound from a headspace is not claimed in claim 1 or in claim 4.

14. Applicant’s arguments on pages 8-9 of Amdt. C regarding the 35 U.S.C. 103 rejection of claims 2, 4 and 6 have been fully considered but are not deemed to be persuasive. Applicant states that “Applicant sees no suggestion to even use [the ionomer of Yoshikawa et al.] as a matrix for the zeolite”, but the rejection does not propose replacing the ionomer of Yoshikawa et al. with the copolymer of Hekal; the rejection proposes completely or partially neutralizing the copolymer of Hekal with metal ions for the reason taught by Yoshikawa et al. (see paragraph 16 of Paper 12). Applicant states “it is not totally clear what Yoshikawa is relied upon to correct”: claim 4 is rejected under 35 U.S.C. 103 in paragraph 16 of Paper 12 for only the instance where claim 4 depends upon claim 2. Claim 4 depends on claim 1 and also on claim 2 (“The package of Claim 1 or Claim 2...”).

15. Applicant’s arguments on pages 9-10 of Amdt. C regarding the 35 U.S.C. 103 rejection of claims 3 and 5 have been fully considered but are not deemed to be persuasive. Applicant argues that there “is no suggestion to employ the polymers of Kennedy et al. as an absorbent in

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and of itself", but the rejection clearly does not propose "employ[ing] the polymers of Kennedy et al. as an absorbent". The conclusion to the rejection of claim 3 in paragraph 17 of Paper 12 is:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the odor absorbing polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix of Hekal and Yoshikawa et al. as a sealant layer which contacts the packaged item since it is notoriously well known to use an ethylene/acid copolymer as a sealant layer which contacts the packaged item as taught by Kennedy et al.

In regard to claim 5, Hekal teaches that the absorbent film layer contains zeolite (page 7, line 3). Since the absorbent film layer of Hekal is compositionally identical to the composition claimed in claim 5, the zeolite of Hekal necessarily hinders the adsorption amines as claimed.

16. Applicant's arguments on page 10 of Amdt. C regarding the 35 U.S.C. 103 rejection of claims 3, 5 and 7 have been fully considered but are not deemed to be persuasive. The Office repeats the arguments in response to Applicant's arguments made in Paper 9 provided in Paper 12 where applicable to the instant claims.

17. Applicant's arguments on pages 10-11 of Amdt. C regarding the 35 U.S.C. 103 rejection of claim 8 have been fully considered but are not deemed to be persuasive because Applicant relies on the argument that "Hekal does not teach a package for [fresh fish or other perishable food items]" which has been addressed above in this Office Action.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

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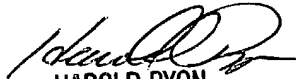
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

04/02/04

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
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